THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3360 OF 2006

DATED 24th FEBRUARY, 2006

BETWEEN

C.Krishna

… Petitioner

and

The District Panchayat Officer, Medak District at Sanga Reddy

and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3360 OF 2006

ORDER:

The petitioner was elected as Member of Ward No.2 of Khajipally Gram Panchayat. He was later elected as Upa Sarpanch of the village and was made in charge of Sarpanch after the death of the Sarpanch. By proceedings, dated 20.07.2005, the first respondent informed the petitioner that he incurred disqualification as Member of Gram Panchayat on the ground that he was having more than two children. He, therefore, filed writ petition being W.P.No.18709 of 2005. This Court disposed of the said writ petition on 24.08.2005 setting aside the proceedings, dated 20.07.2005, to the extent of disqualifying the petitioner as Ward Member. This Court, however, observed that the said proceedings shall be treated as intimation and the petitioner can submit explanation. Thereafter, the first respondent issued order, dated 15.02.2006, to the effect that the earlier proceedings, dated 20.07.2005, will hold good and that the petitioner should vacate the Office of the Member and Upa Sarpanch as well as Incharge Sarpanch. The Panchayat Secretary was directed to take over complete charge. The petitioner again filed the present writ petition assailing the proceedings of the first respondent, dated 15.02.2006.

After hearing the learned counsel for the petitioner and learned Assistant Government Pleader for Panchayat Raj and pursuant to the impugned order, this Court is of considered opinion that the impugned order suffers from an incurable defect. Under Section 22(1) of A.P.Panchayat Raj Act, 1994 (the Act, for brevity), if any application is made that a Member of Gram Panchayat is not qualified or has become disqualified *inter alia* under Section 19 of the Act, the same shall be intimated by the Executive Authority to the District Panchayat Officer, who in turn, will intimate about such allegation of disqualification to the Member. After receiving the intimation, the member has to seek a decision on the allegation from the District Court having jurisdiction over the area. Insofar the portion of the impugned order, which intimates about the disqualification, is concerned, there cannot be any objection. However, insofar as the impugned order directs the petitioner to vacate the Office of Sarpanch as Incharge of the Office is concerned, the same cannot be sustained. The District Panchayat Officer has no power or authority under Section 22 to give a decision when an allegation is made about the disqualification of a Member. Such power is conferred only on the District Court. A reference may be made to the decision of this Court in **N.Tirupataiah v District Panchayat Officer, Nellore**, wherein it was held:

> An analysis of above provision would show that i) any voter or authority may make allegation in writing that a member or a sarpanch of Gram Panchayat is not qualified or has become disqualified under Sections 17 to 20 of the Act;
> ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) of the Act means the panchayat secretary appointed to each Gram Panchayat; iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the member or sarpanch, who allegedly incurred the disqualification; iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, the member or any other member of the Gram Panchayat, or panchayat secretary or the Commissioner, are entitled to apply to the District Court for a decision as to whether a member or sarpanch incurred disqualification and v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained.

Therefore, this writ petition, at the stage of Admission, is disposed of in the following manner. The petitioner shall treat the impugned order as an intimation of disqualification and approach the District Court, Medak at Sanga Reddy, immediately. As and when such application is filed, the District Court shall entertain the same and pass appropriate orders. Pending such decision, it is needless to mention that under Section 22 (2) of the Act, the petitioner can continue as Sarpanch Incharge of the Panchayat. The impugned order insofar as the petitioner to vacate Officer of Member/Upa Sarpanch/Sarpanch Incharge is concerned, the same is unsustainable.

The writ petition is accordingly disposed of. No costs.

(V.V.S.RAO,J)

24.02.2006

pln